

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No. 4705 of 2002

Date of Decision: 25.8.2006

Nasib Chand

...Appellant.

Versus

Chanan Ram and others

...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

PRESENT: Mr. Sarwan Singh, Senior Advocate with
Mr. A.S.Parmar, Advocate for the appellant.

Nemo for the respondents.

AJAY KUMAR MITTAL, J.

This regular second appeal filed by the plaintiff is against the judgment and decree dated 8.5.2002 passed by the lower appellate court vide which the judgment and decree dated 13.6.2001 of the trial court has been set aside and the suit filed by the plaintiff has been dismissed.

The facts of the case as narrated in the plaint are that initially Madho Ram father of the parties to the suit was owner of the suit property and during his life time, he had executed unregistered Will dated 31.5.1993 in favour of the plaintiff. It was pleaded that the said Will had never been challenged by the defendants. It was further pleaded that the suit property was originally allotted to Bhola Ram grandfather of the plaintiff and Bhola Ram died a long time ago and his property devolved upon Madho Ram being the only surviving legal heir.

Upon notice, the defendants filed written statement by raising various preliminary objections. It was pleaded that the property in dispute was previously owned by Bhola Ram, the grandfather of the plaintiff and the defendants and the same was inherited by the plaintiff and the defendants in five equal shares and the mutation thereof was sanctioned on 6.3.1997 and the plaintiff alone was not in possession of the property in dispute. It was denied that Madho Ram executed Will dated 31.5.1993 in favour of the plaintiff and in case the same is proved to have been executed by Madho Ram in favour of the plaintiff the same is result of fraud, misrepresentation and concealment of material facts.

On the pleadings of the parties, the following issues were framed by the trial court:-

1. Whether Madho Ram had executed a Will dated 31.05.1993 in favour of plaintiff? If so its effect? OPP
2. Whether the plaintiff is entitled to declaration as prayed for? OPP
3. Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP
4. Whether the suit is not maintainable? OPD
5. Whether the suit property has not been properly described? OPD
6. If issue No.1 is proved, whether the alleged Will dated 31.05.1993 is result of fraud, misrepresentation, concealment of material facts? OPD
7. Whether the plaintiff has no locus standi and cause of action to file the present suit against the defendants? OPD
8. Relief.

The trial court while deciding issue No.1 after appreciating the evidence led by the parties, came to the conclusion that Madho Ram had executed the Will dated 31.5.1993 in favour of the plaintiff. It was further held that the plaintiff was owner in possession of the property in dispute. Accordingly, the suit filed by the plaintiff was decreed vide judgment and decree dated 13.6.2001.

Feeling aggrieved by the judgment and decree dated 13.6.2001, the defendants filed appeal. The first appellate court vide judgment and decree dated 8.5.2002 accepted the appeal and set aside the judgment and decree passed by the trial court. Accordingly, the suit of the plaintiff was dismissed. The first appellate court while accepting the appeal filed by the defendants after appreciating the evidence on record has discussed various suspicious circumstances in paras 9 to 19 of the judgment and concluded that the Will dated 31.5.1993 Ex.P1 is not a genuine document. The first appellate court rightly reversed the finding of the trial court on issue No.1.

No illegality or perversity could be found in the said finding recorded by the first appellate court warranting interference in the regular second appeal. Finding no merit in this appeal, the same is hereby dismissed.

August 25, 2006
gbs

(AJAY KUMAR MITTAL)
JUDGE